



Australian Government
Australian Public Service Commission

Our reference: LEX 644

Applicant

By email: foi-request-2981-ae0d1443.eo010@aleeas.com

Dear Applicant

Freedom of Information Internal Review Request – LEX 644

1. I am writing about your request for internal review, dated 13 September 2023, regarding a decision made by the Australian Public Service Commission (**Commission**) under the *Freedom of Information Act 1982* (**FOI Act**).

Background

2. On 14 August 2023, you requested the following documents from the Commission under the FOI Act:

Part A

"I request access to any and all documents (including, but not limited to, policy documents, policy guidance, guidelines, directions, instructions issued by Commissioners etc) recording that if a candidate for a role in the Australian Public Service does not have the essential qualifications and experience for a role but "signals", in a job application, that he or she may soon attain the qualifications and build up the relevant experience, members of a selection committee who select the candidate without the essential qualifications and experience ahead of dozens of candidates who do in fact meet the essential qualifications and experience for the role at the time the selection decision is made will not contravene their legislative duty to at all times behave in a way that upholds the APS Employment Principles enshrined in section 10A of the Public Service Act 1999 (Cth): see Public Service Act 1999 (Cth), s 13(11)(a)."

Part B

"I request access to any and all documents (including, but not limited to, policy documents, policy guidance, guidelines, directions, instructions issued by Commissioners etc) recording that it is permissible for a member of a selection committee for a role in the Australian Public Service to provide one of the candidates for a role, who has not attained the essential qualifications or experience for that role, with a contract of employment 28 days before the selection process has even been finalised."



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3. On 13 September 2023, the relevant authorised Freedom of Information (**FOI**) decision maker, Ms Melanie McIntyre, made a decision to release one document in part and three documents in full.
4. On the same date, you sought an internal review of Ms McIntyre's decision. In your application, you provided the following statement:

"Not a single one of the documents that you have provided meets the terms of either one of my requests for access."

Decision

5. I am authorised under subsection 23(1) of the FOI Act to make FOI decisions.
6. I am satisfied that all reasonable steps have been taken to find documents within scope of your request, and that no such documents falling within scope were found to exist.
7. I have also taken into account your own submission that the documents released to you by Ms McIntyre were not within the scope of your request.
8. I therefore **vary** Ms McIntyre's earlier decision by refusing your request for access to documents under section 24A of the FOI Act.

Reasons for decision

9. Subsection 24A(1) of the FOI Act provides:

(1) An agency or Minister may refuse a request for access to a document if:

- (a) all reasonable steps have been taken to find the document; and*
(b) the agency or Minister is satisfied that the document:
(i) is in the agency or Minister's possession but cannot be found; or
(ii) does not exist.

10. The Office of the Australian Information Commissioner (**OAIC**) has issued guidelines under section 93A of the FOI Act. At paragraphs 3.88 to 3.93 of these guidelines, the OAIC provides guidance as to the meaning of the term 'all reasonable steps' for the purposes of subsection 24A(1) of the FOI Act. In this case these steps included searches of document management systems and emails.

Contacts

11. If you require clarification on matters in this letter, please contact the Commission's FOI Officer by email at foi@apsc.gov.au.



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Review rights

12. You are entitled to seek review of this decision. Your review rights are set out at **Attachment A**.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Jo Talbot'.

Ms Jo Talbot
Authorised FOI decision maker
9 October 2023



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ATTACHMENT A

Rights of Review

Asking for a full explanation of a Freedom of Information decision

If you are dissatisfied with this decision, you may seek external review. Before you seek review of a Freedom of Information (**FOI**) decision, you may contact us to discuss your request and we will explain the decision to you.

Applying for external review by the Australian Information Commissioner

If you do not agree with the internal review decision, you can ask the Australian Information Commissioner to review the decision. You have 60 days to apply in writing for a review by the Office of the Australian Information Commissioner (**OAIC**) from the date you received this letter or any subsequent internal review decision.

You can **lodge your application**:

Online: www.oaic.gov.au
Post: Australian Information Commissioner
GPO Box 5218
SYDNEY NSW 2001
Email: enquiries@oaic.gov.au

The OAIC encourage applicants to apply online. Where possible, to assist the OAIC you should include your contact information, a copy of the related FOI decision and provide details of your reasons for objecting to the decision.

Complaints to the Information Commissioner and Commonwealth Ombudsman

Information Commissioner

You may complain to the Information Commissioner concerning action taken by an agency in the exercise of powers or the performance of functions under the FOI Act. There is no fee for making a complaint. A complaint to the Information Commissioner must be made in writing. The Information Commissioner's contact details are:

Telephone: 1300 363 992
Website: www.oaic.gov.au

Commonwealth Ombudsman

You may complain to the Ombudsman concerning action taken by an agency in the exercise of powers or the performance of functions under the FOI Act. There is no fee for making a complaint. A complaint to the Ombudsman may be made in person, by telephone or in writing. The Ombudsman's contact details are:

Phone: 1300 362 072
Website: www.ombudsman.gov.au



Australian Government
Australian Public Service Commission

Anonymous

By email: foi-request-2981-ae0d1443.eo0l0@aleeas.com

Our reference: LEX 619

Dear Sir/Madam,

Freedom of Information request

1. I am writing about your Freedom of Information (FOI) request under the *Freedom of Information Act 1982* (FOI Act) made on **14 August 2023** for access to documents held by the Australian Public Service Commission (Commission).
2. The FOI Act and all other Commonwealth legislation referred to in this letter are publicly available from www.legislation.gov.au.

Documents relevant to your request

3. You requested access to documents in the following terms:
 - ...I request access to any and all documents (including, but not limited to, policy documents, policy guidance, guidelines, directions, instructions issued by Commissioners etc) recording that *if a candidate for a role in the Australian Public Service does not have the essential qualifications and experience for a role but “signals”, in a job application, that he or she may soon attain the qualifications and build up the relevant experience, members of a selection committee who select the candidate without the essential qualifications and experience ahead of dozens of candidates who do in fact meet the essential qualifications and experience for the role at the time the selection decision is made will not contravene their legislative duty to at all times behave in a way that upholds the APS Employment Principles enshrined in section 10A of the Public Service Act 1999 (Cth): see Public Service Act 1999 (Cth), s 13(11)(a).*
 - ...I request access to any and all documents (including, but not limited to, policy documents, policy guidance, guidelines, directions, instructions issued by Commissioners etc) recording that it is permissible for a member of a selection committee for a role in the Australian Public Service to provide one of the candidates for a role, who has not attained the essential qualifications or experience for that role, with a contract of employment 28 days before the selection process has even been finalised.

Decision

4. I am authorised under subsection 23(1) of the FOI Act to make FOI decisions.

5. I am satisfied that all reasonable steps have been taken to locate documents relevant to your request.
6. I have identified four (4) documents within scope of your request.
7. I have decided to:
 - a. grant partial access to one document
 - b. grant full access to three documents
8. **Attachment A** sets out the grounds on which the documents are partially exempt.
9. My reasons are set out in **Attachment B**.

Contacts

10. If you require clarification on matters in this letter please contact the Commission's FOI Officer by telephone on (02) 6202 3500 or by email at foi@apsc.gov.au.

Review rights

11. You are entitled to seek review of this decision. Your review rights are set out at Attachment C.

Yours Sincerely,

A handwritten signature in black ink, appearing to read 'Melanie McIntyre', with a long horizontal line extending to the right.

Melanie McIntyre
Authorised FOI Decision Maker
13 September 2023

ATTACHMENT A

SCHEDULE OF DOCUMENTS

Document	Pages	Description	Exemptions
1	1-5	Conditions of Engagement - Webpage	Full Release
2	6-13	The APS Merit Principle - Webpage	Full Release
3	14-16	Essential Qualifications	Full Release
4	17-19	Email Correspondences	Section 47F – Personal Privacy

Reasons for decision

1. In making my decision I have had regard to:
 - the terms of your request;
 - the content of the documents;
 - the FOI Act; and
 - the FOI Guidelines issued by the Australian Information Commissioner.

Conditional exemptions

Section 47F – Personal privacy

2. Section 47F of the FOI Act provides that a document is conditionally exempt if it would involve the unreasonable disclosure of personal information about any person.
3. Personal information means information or an opinion about an identified individual, or an individual who is reasonably identifiable whether:
 - the information or opinion is true or not; and
 - the information or opinion is recorded in a material form or not.
4. I consider that the Documents contain such matter; specifically, the names and contact information of non-SES APS employees.
5. I have had regard to the matters I must consider under subsection 47F(2) of the FOI Act in determining whether the disclosure of the personal information would involve the unreasonable disclosure of personal information.
6. In considering what is unreasonable, the Administrative Appeals Tribunal in *Re Chandra and Minister for Immigration and Ethnic Affairs* [1984] AATA 437 at [51] stated:

...whether a disclosure is 'unreasonable' requires... a consideration of all the circumstances, including the nature of the information that would be disclosed, the circumstances in which the information was obtained, the likelihood of the information being information that the person concerned would not wish to have disclosed without consent, and whether the information has any current relevance... and to weigh that interest in the balance against the public interest in protecting the personal privacy of a third party...

Section 47F – Personal privacy

7. Other factors to be considered include the nature, age and current relevance of the information, any opposition to disclosure held by the person that the personal information relates to, and the circumstances of an agency's collection and use of the information ('FG' and *National Archives of Australia* [2015] AICmr 26 at [47]).
8. I note that in *Warren; Chief Executive Officer, Services Australia and (Freedom of information)* [2020] AATA 4557 (9 November 2020), Deputy President S A Forgie found (at [130]):

An individual may include his or her direct telephone number in correspondence directed to other persons. Unless published on an agency's website or made public in some other way, such as on a pamphlet or report available to the public, I consider that disclosure of an individual's telephone number in his or her place of employment is unreasonable. Its disclosure will provide an avenue by which others may choose to express their displeasure with the individual or with that for which he or she is responsible but its disclosure does not make any positive contribution to increasing public participation in Government processes or in increasing scrutiny, discussion, comment and review of the Government's activities.

9. In relation to the question of whether disclosure would be unreasonable, the FOI Guidelines provide, at paragraph 6.144:

For example, in Colakovski v Australian Telecommunications Corp, Heerey J considered that '... if the information disclosure were of no demonstrable relevance to the affairs of government and was likely to do no more than excite or satisfy the curiosity of people about the person whose personal affairs were disclosed ... disclosure would be unreasonable'. This illustrates how the object of the FOI Act of promoting transparency in government processes and activities needs to be balanced with the purpose of s 47F to protect personal privacy, although care is needed to ensure that an FOI applicant is not expected to explain their reason for access to contrary to s 11(2).

10. Relevant to personal information of certain public servants, under the FOI Act there is no presumption that agencies and ministers should start from the position that the inclusion of the full names of staff in documents increases transparency and the objects of the FOI Act: *Warren; Chief Executive Officer, Services Australia and (Freedom of information)* [2020] AATA 4557 at [83].
11. I have identified the following factors that, in my view, do not support the release of this personal information under section 47F of the FOI Act:
 - the individuals' personal information, in particular their name, will identify them;
 - the personal information is unique and relates specifically to the individuals, and is generally not well known or publicly available; the FOI Act does not control or restrict the subsequent use or dissemination of information released under the FOI Act;

Section 47F – Personal privacy

- the disclosure of this information will not advance scrutiny of any decisions falling within scope of your FOI request;
- the disclosure of this information could expose concerned individuals to unsolicited and inappropriate approaches by external parties;
- release of the individuals' personal information may cause stress for them or other detriment; and
- disclosure would prejudice the individuals' right to privacy.

12. I have therefore decided to the extent that the documents include personal information of non-SES level staff members.

Section 11A – Public interest test

13. Subsection 11A(5) of the FOI Act provides that an agency must give access to a document if it is conditionally exempt unless access to the document would, on balance, be contrary to the public interest.

14. I have considered the public interest exemption factors in favour of disclosure at subsection 11B(3) of the FOI Act, including the extent to which access to the documents would promote the objects of the FOI Act and inform debate on a matter of public importance.

15. I have identified the following factors as weighing against disclosure:

- disclosure of individuals' personal information will not advance any scrutiny of any decisions falling within the scope of your FOI request;
- disclosure would prejudice individuals' right to privacy;
- disclosure could lead to unwarranted approaches to the individual which would adversely impact their ability to perform their role and functions, noting that general enquiry phone numbers and email addresses are available

16. Subsection 11B(4) of the FOI Act lists factors that are irrelevant to determining whether access would be in the public interest. I have not considered these factors.

17. On balance, I find disclosure of some parts of the documents would be contrary to the public interest. To the extent that the material contained in the documents are conditionally exempt under section 47F, those parts are exempt from disclosure.

Rights of Review

Asking for a full explanation of a Freedom of Information decision

If you are dissatisfied with this decision, you may seek review. Before you seek review of a Freedom of Information (FOI) decision, you may contact us to discuss your request and we will explain the decision to you.

Seeking review of a Freedom of Information decision

If you still believe a decision is incorrect, the *Freedom of Information Act 1982* (the FOI Act) may give you the right to apply for a review of the decision. Under sections 54 and 54L of the FOI Act, you can apply for a review of an FOI decision by seeking:

1. an internal review by an different officer of the Australian Public Service Commission; and/or
2. external review by the Australian Information Commissioner.

There are no fees applied to either review option.

Applying for a review by an Internal Review Officer

If you apply for internal review, a different decision maker to the departmental delegate who made the original decision will carry out the review. The Internal Review Officer will consider all aspects of the original decision and decide whether it should change. An application for internal review must be made in writing within 30 days of receiving this letter to:

Email: foi@apsc.gov.au
Post: The FOI Officer
Australian Public Service Commission
B Block, Treasury Building
GPO Box 3176
Parkes Place West
PARKES ACT 2600

You do not need to fill in a form. However, it is a good idea to set out any relevant submissions you would like the Internal Review Officer to further consider, and your reasons for disagreeing with the decision.

Applying for external review by the Australian Information Commissioner

If you do not agree with the original FOI decision or the internal review decision, you can ask the Australian Information Commissioner to review the decision. You have 60 days to apply

in writing for a review by the Office of the Australian Information Commissioner (the OAIC) from the date you received this letter or any subsequent internal review decision.

You can **lodge your application**:

Online:

[www.oaic.gov.](http://www.oaic.gov.au)

[au](http://www.oaic.gov.au)

Post: Australian Information
Commissioner GPO Box 5218
SYDNEY NSW 2001

Email: enquiries@oaic.gov.au

The OAIC encourage applicants to apply online. Where possible, to assist the OAIC you should include your contact information, a copy of the related FOI decision and provide details of your reasons for objecting to the decision.

Complaints to the Information Commissioner and Commonwealth Ombudsman

Information Commissioner

You may complain to the Information Commissioner concerning action taken by an agency in the exercise of powers or the performance of functions under the FOI Act. There is no fee for making a complaint. A complaint to the Information Commissioner must be made in writing. The Information Commissioner's contact details are:

Telephone: 1300 363 992

Website:

[www.oaic.gov.](http://www.oaic.gov.au)

[au](http://www.oaic.gov.au)

Commonwealth Ombudsman

You may complain to the Ombudsman concerning action taken by an agency in the exercise of powers or the performance of functions under the FOI Act. There is no fee for making a complaint. A complaint to the Ombudsman may be made in person, by telephone or in writing. The Ombudsman's contact details are:

Phone: 1300 362 072

Website: www.ombudsman.gov.au

Conditions of engagement

Published: 6 May 2021

Last updated: 11 July 2023

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Overview

A condition of engagement is a requirement that a prospective employee must meet prior to being engaged or, in certain circumstances, within a specified timeframe following engagement.

Section 22(6) of the *Public Service Act 1999*

(<https://www.legislation.gov.au/Series/C2004A00538>) (PS Act) provides that the engagement of an Australian Public Service (APS) employee may be subject to conditions notified to the employee, including conditions dealing with any of the following matters:

- probation
- citizenship
- formal qualifications
- security and character clearances and
- health clearances.

An agency may also impose additional conditions of engagement.

There are additional requirements in the PS Act and the *Australian Public Service Commissioner's Directions 2022* (<https://www.legislation.gov.au/Series/F2022L00088>)(the Directions) regarding citizenship and probation.

- Section 22(8) of the PS Act requires that an Agency Head must not engage an employee who is not an Australia citizen, unless the Agency Head considers it appropriate to do so. Further information on citizenship as a condition of engagement is available on the [Citizenship \(/working-aps/aps-employees-and-managers/guidance-and-information-recruitment/citizenship-aps\)](https://www.legislation.gov.au/Series/F2022L00088) webpage.
- Section 44 of the Directions requires that an Agency Head engaging an APS employee other than an employee engaged for duties that are irregular or intermittent, must be engaged on probation. A waiver may apply where reasonable circumstances justify it. Further information on probation as a conditions of engagement is available on the [Probation \(/working-aps/aps-employees-and-managers/guidance-and-information-recruitment/probation\)](https://www.legislation.gov.au/Series/F2022L00088) webpage.

Requirements for imposing conditions of engagement

Conditions of engagement can only be imposed at the time a prospective employee is engaged in the APS, they cannot be imposed or varied after engagement.

When determining whether to impose conditions of engagement, agencies should consider the relevance of the condition of engagement to the duties of the vacancy and the operating environment of the agency.

Generally, the period of an engagement should not be a factor when considering whether to impose conditions. Conditions of engagement can only be imposed at the time of engagement and therefore, any relevant conditions of engagement should be imposed even for short term contracts to provide coverage in the event the term of employment is extended.

To enable a prospective employee to make an informed decision about an offer of employment, conditions of engagement should be outlined in the letter of offer, including:

- details of each condition and the evidence required (where relevant)
- a timeframe by which each condition must be met
- that employment can be terminated by the agency if each condition is not met within the specified timeframe.

Managing conditions of engagement

Where a condition is not met before engagement, an agency may decide to employ the person subject to meeting the condition. The prospective employee should be notified in writing of the specified timeframe they have to meet the condition of engagement.

An employee who does not meet the conditions of engagement within the specified timeframe may have their employment terminated under section 29(3)(f) of the PS Act.

A condition of engagement continues to apply if the employee has a change of duties, unless the agency chooses to waive the condition because it is no longer relevant to the work being performed. Prior to waiving a condition of engagement, agencies need to be aware that, once a condition is waived, it cannot be imposed again.

Movement between APS agencies

Where an employee moves to another APS agency before all conditions of employment have been met, any conditions of engagement will continue to apply unless specifically waived by the receiving agency. Conditions of engagement should only be waived where the condition is not relevant to employment in the receiving agency, including the duties of the role the employee will be performing.

Prior to the movement of an employee, the receiving agency should:

- confirm whether the employee is still subject to any conditions of engagement (i.e. if the condition has not been met)
- make it clear to the employee that:
 - the condition continues and
 - employment can be ended by the receiving agency if the condition is not met within the specified timeframe.

A condition of engagement cannot be imposed by the receiving agency if it was not initially imposed by the agency that made the engagement.

Additional information on movements between APS agencies is available on the [Movement between APS agencies \(/working-aps/aps-employees-and-managers/movement/movement-between-aps-agencies\)](https://www.apsc.gov.au/working-aps/aps-employees-and-managers/movement/movement-between-aps-agencies) webpage.

Additional information on security and character clearances

While a prospective employee may be required to hold and maintain a security clearance as a condition of engagement (or as a condition of employment), a candidate must not be excluded from applying for a vacancy if they do not hold, and are willing to undergo, a security clearance.

Requiring a candidate to hold a security clearance at the time of applying for the vacancy would not be in accordance with the merit principle, where all eligible members of the community are given reasonable opportunity to apply for a vacancy.

A prospective employee may also be required to satisfy character clearance or employment screening as a condition of engagement.

Character clearances may be required to confirm whether a prospective employee is of suitable character to be engaged based on the agency's risk tolerance, for example a criminal history check.

An agency can determine what clearances are appropriate. For example, checks can be made with the police, with professional licensing or registration boards, or with previous APS or other employers. For more information on matters where character clearances may assist agencies, refer to the [Australian Government Protective Security Policy Framework- external site](https://www.protectivesecurity.gov.au/about) (<https://www.protectivesecurity.gov.au/about>).

Additional information on health clearances

A prospective employee may be required to satisfy certain requirements in relation to health and fitness for duty as a condition of engagement.

An agency can determine what evidence is reasonably required to assess whether a prospective employee is fit for duty. For example, a prospective employee may be asked to:

- provide a declaration of their health status, including disclosure of pre-existing medical conditions
- undertake a medical examination and/or
- undergo an expert medical assessment (such as eyesight testing).

Decisions in relation to the suitability or fitness of a prospective employee to perform a particular set of duties must take account of:

- the [APS Values \(/node/95\)](#) and [Employment Principles \(/node/465\)](#), including that:
 - decisions relating to engagement are based on merit and
 - the APS workplace is free from discrimination
- other employment legislation, including the [*Disability Discrimination Act 1992*](#) (<https://www.legislation.gov.au/Series/C2004A04426>). It is unlawful for an employer to discriminate against an employee or prospective employee on the grounds of disability.

Further information

HR practitioners seeking more information on conditions of engagement can contact the Employment Policy team via employmentpolicy@apsc.gov.au (<mailto:employmentpolicy@apsc.gov.au>) or call the advice line on (02) 6202 3857.

The APS merit principle

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Overview

Merit is a fundamental principle of Australian Public Service (APS) employment. Section 10A(1) (c) of the *Public Service Act 1999* (<https://www.legislation.gov.au/Series/C2004A00538>) (the PS Act) sets out the APS Employment Principles, which establish that the APS is a career-based public service that makes decisions relating to engagement and promotion that are based on merit.

In accordance with section 10A(2) of the PS Act, a decision to engage or promote a person is based on merit if:

- all eligible members of the community are given a reasonable opportunity to apply to perform the relevant duties; and
- an assessment is made of the relative suitability of the candidates to perform the relevant duties, using a competitive selection process; and
- the assessment is based on the relationship between the candidates' work-related qualities and the work-related qualities genuinely required to perform the relevant duties; and
- the assessment focuses on the relative capacity of the candidates to achieve outcomes related to the relevant duties; and
- the assessment is the primary consideration in making the employment decision.

Section 22 of the PS Act allows for an Agency Head to engage an individual as an APS employee and section 25 enables the promotion of an APS employee. When making these decisions, an Agency Head must uphold the APS Employment Principles. How merit is applied in APS engagement and promotion decisions is explained in Part 4 of the *Australian Public Service Commissioner's Directions 2022* (<https://www.legislation.gov.au/Series/F2022L00088>) (the Directions).

Elements of the merit principle

Merit based selection process

Section 23 of the Directions outlines that an Agency Head upholds the APS Employment Principle 10A(1)(c) of the PS Act by making an engagement or promotion decision that is informed by a merit-based selection process. Section 24 of the Directions outlines that a merit-based selection process for engagement or promotion must include the following elements:

- the aim and purpose of the selection process is determined in advance
- information about the selection process is readily available to candidates
- the selection process is applied fairly in relation to each eligible candidate and
- the selection process is appropriately documented.

In deciding the suitability of a candidate to be engaged or promoted, merit is the primary consideration. If the candidate is otherwise equal on merit with another candidate, secondary considerations may be taken into account if they relate to matters within the control of the candidate, for example willingness to relocate.

Section 23 of the Directions also provides that Subdivision C, sections 27 – 38 sets out circumstances in which merit-based selection processes are modified or do not apply.

Notifying vacancies – reasonable opportunity to apply

Section 25 of the Directions outlines the requirements for notifying a vacancy.

Vacancies which may result in the engagement or promotion of

- an ongoing employee; or
- prior to the commencement of subsection 333E(1) of the *Fair Work Act 2009* (<https://www.legislation.gov.au/Series/C2009A00028>) (FW Act), the engagement of a non-ongoing employee for an initial period of more than 18 months; or

- following the commencement of subsection 333E(1) of the FW Act, the engagement of a non-ongoing employee for an initial period of more than 12 months

must be notified in the Public Service Gazette (PS Gazette). A written decision to engage or promote a candidate must be made within 18 months of the vacancy being notified in the PS Gazette.

For example, if a vacancy is advertised in the PS Gazette on 18 October 2021, a merit list or pool formed from that recruitment process may be used to engage or promote into a similar vacancy by 17 April 2023 (18 months after the original vacancy notification).

Assessment of candidates

A merit-based decision requires:

- an assessment to be made of the relative suitability of the candidates to perform the relevant duties, using a competitive selection process; and
- the assessment to be based on the relationship between the candidates' work-related qualities and the work-related qualities genuinely required to perform the relevant duties; and
- the assessment focuses on the relative capacity of the candidates to achieve outcomes related to the relevant duties; and
- the assessment is the primary consideration in making the decision.

Relative suitability of candidates

There must be an assessment of the relative suitability of the candidates to perform the relevant duties. Relative suitability is where a candidate's suitability is compared to the suitability of other candidates using a competitive selection process.

A candidate is assessed on:

- the relationship between their work-related qualities and the work-related qualities genuinely required to perform the relevant duties; and
- their capacity to achieve outcomes related to the relevant duties; and
- a comparison against the other candidates that are being considered for the vacancy.

Work-related qualities

The work-related qualities that may be taken into account when making an assessment of a candidate's suitability include:

- skills and abilities
- qualifications, training and competencies
- standard of work performance
- capacity to produce outcomes by effective performance at the level required
- relevant personal qualities, such as honesty and integrity
- potential for further development and
- ability to contribute to team performance.

When undertaking a recruitment process, there needs to be a clear understanding of the role and what is genuinely required for the role. Gender and age are not work-related qualities.

Agencies may find tools such as the [APS and Executive Level Work Level Standards \(/working-aps/aps-employees-and-managers/work-level-standards-aps-level-and-executive-level-classifications\)](#) or the [SES Work Level Standards \(/working-aps/aps-employees-and-managers/classifications/work-level-standards-senior-executive-service\)](#) can help in articulating standards of work against which to assess candidates.

Awareness of unconscious bias will assist assessors to focus on work-related qualities.

Capacity to achieve outcomes

An assessment of a candidate's capacity to achieve outcomes related to the relevant duties considers how the candidate demonstrates their work-related qualities on-the-job. It may also consider related qualities such as drive, initiative or other behavioural qualities that relate to a candidate's ability to deliver in the context of the role.

Examples

Example 1

You are recruiting for an APS level 3 customer service officer. The assessment for work-related qualities aims to assess the skills, knowledge and abilities needed to undertake basic claims processing. Skills required could include verbal communication, working collaboratively,

developing positive relationships and a commitment to customer service. It would not be a genuine requirement for a customer service officer at this level to have a high level of problem solving or strategic stakeholder engagement capabilities.

How each candidate demonstrates their effectiveness at communicating and working collaboratively, and their customer service experience is the assessment of capacity to achieve outcomes related to the relevant duties.

Example 2

You are recruiting for an APS level 6 team leader - customer service role. The work-related qualities required would be more developed and advanced compared to an APS level 3 customer service officer. For example, leading rather than contributing to team and organisational outcomes, and additional work-related qualities, such as people management skills, may also be required.

The assessment process should enable the selection panel to decide which candidate most effectively demonstrated the work-related qualities for the role and their ability to achieve outcomes, to be able to provide a recommendation to the decision maker.

Case Study: Upholding the merit principle in a rolling recruitment campaign

Scenario: an agency proposes to conduct 'anytime' (or 'rolling') recruitment. It advises that it would like to have positions open for a long period of time, or permanently, during which it can short-list and interview candidates who can be placed in a merit list or pool. The selected candidates could then be offered ongoing roles at any time, as a vacancy arises. Can this be done?

Answer: 'rolling' or 'anytime' recruitment does not meet the requirements of a decision based on merit in accordance with section 10A(1) of the PS Act, for the engagement or promotion of ongoing APS employees.

While the PS Act does not explicitly state that all applications must be received before they can be assessed, a decision made prior to the assessment of all applications could not be considered a merit based decision. This is because it would not be possible to assess candidates against future candidates. Merit cannot be applied where the assessment only takes into account a candidate's capability. Rolling recruitment processes where applications are assessed and offers are made prior to the closing date are incompatible with the requirements of merit.

Agencies may conduct 'sequential' recruitment, provided there are clear and unambiguous 'rounds'. For example, a vacancy is notified on 1 May with a closing date of 31 May and, at that closing date, all candidates from that 'round' are comparatively assessed against the work-related qualities required to perform the job. The vacancy is subsequently readvertised on 1 June with a closing date of 30 June.

Merit is the primary consideration

In accordance with section 24(2) of the Directions, when making a selection decision, merit is the primary consideration and, if the candidates are otherwise equal on merit, secondary considerations may be taken into account if they relate to matters within the control of the candidate. These may include a candidate's:

- ability to start by a particular date
- a willingness to relocate or
- an ability to meet other reasonable agency requirements.

Secondary selection considerations should be directly related to the requirements of the role.

Any secondary consideration that is applied needs to be consistent with other elements of the APS Employment Principles and not used in a way that constitutes patronage or favouritism, or direct or indirect discrimination.

Where an agency uses a merit list or pool to fill a similar vacancy (defined at section 9 of the Directions) and, as the result of relevant secondary considerations a candidate is not successful, the candidate remains on the merit list or pool to be considered for future vacancies. For example, a person not selected because they could not start by a particular date would remain on the merit list or pool.

Non-ongoing and irregular and intermittent opportunities

For vacancies that are either:

- irregular or intermittent
- for 18 months or less, prior to the commencement of subsection 333E(1) of the FW Act; or
- for 12 months or less following commencement of subsection 222E(1) of the FW Act.

subsection 27(4) of the Directions requires that, as a minimum, an Agency Head must be satisfied that the person to be engaged has the work-related qualities genuinely required to perform the relevant duties.

While these vacancies are not required to be notified in the PS Gazette, subsection 27(3) of the Directions require that, as far as practicable, they are brought to the notice of the community in a way that provides a reasonable opportunity for eligible members of the community to apply. For example, such vacancies can be advertised on agency websites, on job boards/job seeker sites or on social media. This includes using an agency or a recruitment firm's temporary registers.

Merit lists or pools

A merit list or pool may be established when an agency undertakes a competitive selection process.

A decision can be made to employ a person who has been found suitable for a vacancy, or similar vacancy (as defined at section 9 of the Directions), if the decision is made within 18 months of the original vacancy being notified in the PS Gazette. Doing so offers the agency and other APS agencies flexibility to fill future vacancies quickly and reduces recruitment costs.

Further information on merit lists and similar vacancies can be found on the [Creating and Sharing Merit Lists or Pools \(/working-aps/aps-employees-and-managers/guidance-and-information-recruitment/creating-using-and-sharing-merit-lists\)](https://www.apsc.gov.au/working-aps/aps-employees-and-managers/guidance-and-information-recruitment/creating-using-and-sharing-merit-lists) webpage.

RecruitAbility Scheme

RecruitAbility offers candidates an opportunity to progress past the initial stage in the assessment process, if they opt into RecruitAbility and they have the work-related qualities required to perform the relevant duties and they meet the eligibility requirements (if any) of the role.

If an agency chooses to apply RecruitAbility they will:

- conduct an initial shortlisting assessment of all candidates
- check the non-shortlisted applications for any RecruitAbility candidates
- assess the RecruitAbility candidates and ensure they have the work-related qualities required to perform the relevant duties and who meet the eligibility requirements (if any); and
- progress RecruitAbility candidates who meet have the work-related qualities and meet the eligibility requirements(if any) of the role to the next selection stage.

Candidates who are assessed as having the work-related qualities required to perform the relevant duties and who meet the eligibility requirements, regardless of their participation in RecruitAbility, are not shortlisted for further consideration.

If applying the RecruitAbility scheme to a vacancy, the job advertisement must advise candidates that they are required to opt into the scheme, if eligible.

Further information on the RecruitAbility scheme can be found on the [RecruitAbility \(/working-aps/diversity-and-inclusion/disability/recruitability\)](#) webpage.

Affirmative measures

Under affirmative measures, a vacancy may be identified as open only to people with disability or Aboriginal and/or Torres Strait Islander peoples. Other than setting a limit on the eligibility of candidates to apply for a vacancy, all other requirements for merit apply.

Further information on affirmative measures can be found on the [Diversity and Inclusion \(/working-aps/diversity-and-inclusion\)](#) webpages.

Further information

HR practitioners seeking more information on the APS Merit Principle can contact the Employment Policy team via employmentpolicy@apsc.gov.au (<mailto:employmentpolicy@apsc.gov.au>) or call the advice line on (02) 6202 3857.



Essential qualifications

The aim of this information sheet is to provide information regarding essential qualifications and how they can be required for some jobs in the Australian Public Service (APS), as well as provide examples of essential qualifications and links to further relevant information.

Some jobs in the APS require particular qualifications. These can include educational qualifications or membership of a professional body.

Agencies must comply with Australian Government and state and territory legislative requirements that are in place for particular professions.

An essential qualification means an agency has determined that the job cannot be performed satisfactorily by a person who does not have that qualification.

When recruiting for a job that requires an essential qualification the qualifications should be specified in the APS Employment *Gazette* notification and any other advertising as well as in any supporting documentation provided to applicants.

Before recruiting the agency may wish to review if the essential qualifications are still required for the job.



did you know?

Imposing a particular essential qualification without justification on duties that can be genuinely performed without it could be incompatible with merit-based decision making.

Examples of essential qualifications

- registration as a medical practitioner for medical roles
- a law degree and eligibility to be admitted to practice in an Australian state or territory for legal roles
- an undergraduate degree for entry into a graduate development program

Engagement

Gaining or verifying essential qualifications can be included as a condition of engagement.

Failure to meet a condition of engagement relating to essential qualifications can result in termination of employment on the ground specified in section 29(3)(f) of the *Public Service Act 1999*.



more information

APSC website

<http://www.apsc.gov.au/publications-and-media/current-publications/conditions-of-engagement>

Info sheet: Essential qualifications

Last updated: 09 Jul 2013

This page is: under review

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When recruiting for a job that requires an essential qualification the qualifications should be specified in the Public Service *Gazette* notification and any other advertising as well as in any supporting documentation provided to applicants.

Before recruiting the agency may wish to review if the essential qualifications are still required for the job.

Did you know?

Imposing a particular essential qualification without justification on duties that can be genuinely performed without it could be incompatible with merit-based decision making.

Examples of essential qualifications

- registration as a medical practitioner for medical roles
- a law degree and eligibility to be admitted to practice in an Australian state or territory for legal roles
- an undergraduate degree for entry into a graduate development program

Engagement

Gaining or verifying essential qualifications can be included as a condition of engagement. Failure to meet a condition of engagement relating to essential qualifications can result in termination of employment on the ground specified in section 29(3)(f) of the *Public Service Act 1999*.

More information

APSC website link:

- [Conditions of engagement](#)

[Download this publication \(MS Word\)](#)

s 47F(1)

From: Staffing Policy
Sent: Thursday, 2 April 2020 1:46 PM
To: s 47F(1)
Subject: RE: Urgent Advice regarding Essential Qualifications and Security Clearance for SES Band1 advertisement [SEC=OFFICIAL]

OFFICIAL

Good afternoon s 47F(1)

It is possible to make a decision to engage a person with a condition that they obtain the required clearance within a certain time and then negotiate a delayed start to their employment. It is not required for an employee to commence duties within 12 months of notifying a vacancy – rather, a decision to engage the person must be made within that time. If a decision is made within that time limit, the actual commencement can be at any later date.

It is always open to the agency to fill an urgent vacancy through a transfer at level, without a recruitment process, or through an EOI. You can also consider filling the role temporarily, at level or with acting arrangements in accordance with your internal policies. This will give you time to fill the role through a selection process and have required security clearances in place.

Kind regards

s 47F(1)

Staffing Policy, Integrity, Performance and Employment Policy

Australian Public Service Commission

Level 4, B Block, Treasury Building, Parkes Place West, PARKES ACT 2600
 GPO Box 3176 CANBERRA ACT 2601

w: www.apsc.gov.au

From: s 47F(1)
Sent: Wednesday, 1 April 2020 14:14
To: Staffing Policy <StaffingPolicy@apsc.gov.au>
Subject: RE: Urgent Advice regarding Essential Qualifications and Security Clearance for SES Band1 advertisement [SEC=OFFICIAL]

Thanks s 47F(1) the issue we have is that the successful candidate could not commence in this particular role until they had the appropriate clearance level, which can take up to 12 months.

Could an option be to advertise the role separately as open to APS Employees only, and include text to say successful candidate 'must' hold the clearance level required?

Thanks in advance.

Kind regards,

47F

s 47F(1)

Senior Project Officer, People
Corporate and Digital Division

s 47F(1) | s 47F(1)

Department of Industry, Science, Energy and Resources | www.industry.gov.au

Supporting economic growth and job creation for all Australians

We are collaborative, innovative, respectful and strive for excellence



The department acknowledges the traditional owners of the country throughout Australia and their continuing connection to land, sea and community. We pay our respect to them and their cultures and to the elders past, present and emerging

OFFICIAL

From: Staffing Policy [<mailto:StaffingPolicy@apsc.gov.au>]

Sent: Wednesday, 1 April 2020 1:58 PM

To: s 47F(1)

Subject: RE: Urgent Advice regarding Essential Qualifications and Security Clearance for SES Band1 advertisement [SEC=OFFICIAL]

OFFICIAL

Good afternoon 47F

Our advice on security clearances as a condition of engagement remains the same – as things currently stand, it is not possible for a person to obtain a security clearance unless they are an APS employee, therefore making the holding of a security clearance a condition results in the de facto restriction of the vacancy to current APS employees, shutting out other members of the community.

Kind regards

s 47F(1)

Staffing Policy, Integrity, Performance and Employment Policy

Australian Public Service Commission

Level 4, B Block, Treasury Building, Parkes Place West, PARKES ACT 2600
GPO Box 3176 CANBERRA ACT 2601

w: www.apsc.gov.au



From: s 47F(1)

Sent: Wednesday, 1 April 2020 13:00

To: Staffing Policy <StaffingPolicy@apsc.gov.au>

Subject: Urgent Advice regarding Essential Qualifications and Security Clearance for SES Band1 advertisement

[SEC=UNCLASSIFIED]

Importance: High

Hi team,

The Department of Industry, Science, Energy and Resources will be advertising SES Band 1 roles across the department. An essential qualification/requirement for one of the vacant positions is that the successful candidate hold a current Positive Vetting security clearance.

Clause 2.3.1 in the Recruitment and Selection APS Legislative Framework states that security clearances can be included in advertising as an essential qualification, for example 'Successful candidates must have the ability to obtain and maintain a specified security clearance (at the required level).'

My understanding is that we can't make holding a particular security clearance level an essential qualification as it would then exclude all members of the community from applying for the role. Can you please advise if this is still the case and any further reasons why this is so (if applicable)?

Thanks in advance.

Kind regards,

47F

s 47F(1)

**Senior Project Officer, People
Corporate and Digital Division**

s 47F(1) | s 47F(1)

Department of Industry, Science, Energy and Resources | www.industry.gov.au

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UNCLASSIFIED

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